

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Before the court is plaintiffs Eric J. Roth and Corin L. Roth's (collectively "the Roths") motion for reconsideration of the court's order granting defendants' various motions to dismiss (Doc. #25<sup>1</sup>). Doc. #26. Defendants filed an opposition (Doc. #27) to which the Roths replied (Doc. #28).

## I. Facts and Procedural History

In October 2005, the Roths purchased real property through a mortgage note and deed of trust executed by defendant Integrity 1st Financial, LLC (“Integrity”). The Roths defaulted on the loan and defendants initiated non-judicial foreclosure proceedings.

Subsequently, on May 2, 2011, the Roths filed a complaint against defendants alleging nine causes of action: (1) debt collection violations; (2) Nevada Unfair and Deceptive Trade Practices

<sup>1</sup> Refers to the court's docketing number.

1 Act, NRS 598.0923; (3) Nevada Unfair Lending Practices Act, NRS 598D.100; (4) breach of the  
2 covenant of good faith and fair dealing; (5) NRS 107.080; (6) quiet title; (7) fraud; (8) slander of  
3 title; and (9) abuse of process. Doc. #1, Exhibit A.

4 In response, defendants filed a series of motions to dismiss (Doc. ##3, 6, 14) which were  
5 granted by the court (Doc. #25). Thereafter, the Roths filed the present motion for reconsideration.  
6 Doc. #26.

7 **II. Discussion**

8 The Roths bring their motion for reconsideration pursuant to Fed. R. Civ. P. 59(e). A  
9 motion under Rule 59(e) is an “extraordinary remedy, to be used sparingly in the interests of  
10 finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estaet of Bishop*, 229 F.3d  
11 887, 890 (9th Cir. 2000). Rule 59(e) provides that a district court may reconsider a prior order  
12 where the court is presented with newly discovered evidence, an intervening change of controlling  
13 law, manifest injustice, or where the prior order was clearly erroneous. FED. R. CIV. P. 59(e); *see*  
14 *also United States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir. 1998); *School Dist. No. 1J, Multnomah*  
15 *County v. AcandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

16 In their motion, the Roths contend that there has been an intervening change in controlling  
17 law such that the court’s prior order is in error. *See* Doc. #26. Specifically, the Roths contend that  
18 the recent Ninth Circuit decision in *Cervantes v. Countrywide Home Loans*, 656 F.3d 1034 (9th  
19 Cir. September 7, 2011), establishes that a party must be a holder of both the mortgage note and  
20 deed of trust to initiate non-judicial foreclosure proceedings. *Id.*

21 The court has reviewed the documents and pleadings on file in this matter and finds that  
22 reconsideration of the court’s order is not warranted. The Roth’s reliance on *Cervantes* is  
23 misplaced. First, that decision is based solely on the application of Arizona law which differs  
24 greatly from Nevada law in terms of non-judicial foreclosures. Nevada law does not require the  
25 production of the original note before one of the statutorily enumerated parties initiates a non-  
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1 judicial foreclosure. *Weingarter v. Chase Home Finance, LLC*, 702 F. Supp. 2d 1276, 1280 (D.  
2 Nev. 2010). Second, the *Cervantes* court re-established the legality of statutorily enumerated parties  
3 initiating non-judicial foreclosure proceedings against a defaulting party. *See Cervantes*, 656 F.3d  
4 at 1044. Therefore, the court finds that the Roth's motion for reconsideration is without merit and  
5 shall deny the motion accordingly.

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7 IT IS THEREFORE ORDERED that plaintiffs' motion for reconsideration (Doc. #26) is  
8 DENIED.

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IT IS SO ORDERED.

10 DATED this 20th day of December, 2011.

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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE

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